

FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

Civil Action No. 4:20-cv-00957-SDJ

GOOGLE LLC,

Defendant.

EXHIBIT 9

**PLAINTIFF STATES' OPENING BRIEF TO THE SPECIAL MASTER
FOR THE FEBRUARY 22, 2024 HEARING**

February 9, 2024

Via E-mail

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Re: *The State of Texas, et al. v. Google LLC*, Case No. 4:20-cv-00957-SDJ (E.D. Tex.)

Dear Counsel:

We write on behalf of the Plaintiff States (“States”) following up on our letter, dated January 16, 2024, and your response letter, dated January 30, 2024, regarding the production of linked files pursuant to Appendices J and D of the Order regarding Discovery Procedure (“ESI Protocol”).

In our January 16 letter, the States requested that Google provide a response by January 23, 2024, on whether Google agrees to conduct the searches for, and then produce if found, the requested linked documents and/or the required metadata, listed by beginning Bates Number in the spreadsheet attached as Appendix 1 to the Letter. The States also requested that Google provide a timeline for those searches and productions.

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Google responded on January 30, 2024. While Google contested the reasonableness and proportionality and, partially, the timeliness of the request, Google stated that it agreed “to provide Plaintiffs with an overlay that provides additional linked document metadata, which we expect will address many of the documents at issue in Appendix 1. We anticipate providing that overlay to Plaintiffs within a week.” On February 2, 2024, Google produced “a supplemental and cumulative overlay for linked documents.” It does not appear that Google has produced any other overlays for linked documents in the interim.

The February 2 overlay produced by Google only addresses 236 entries from the 5,811 documents listed in Appendix 1 to our January 16 letter of documents with missing LinkedAttachment IDs or metadata to permit identification and access to the referenced linked documents. Attached as Appendix 2 is an updated list of 5,575 documents (the difference between 236 and 5,811) that our analysis shows still do not have LinkedAttachment ID or other like metadata.

Google’s January 30 letter states that “Plaintiffs already have many of the documents that they are now requesting.” If that is the case, please produce the metadata necessary to identify those linked documents corresponding with each link.

The States continue to believe that their request for metadata to identify the linked documents in 5,575 documents, or production of those linked documents if not already produced, is reasonable and proportionate, in light of the close to 6 million documents produced by Google in this case. The States disagree with Google’s objection to the timing of their request. MDL Plaintiffs raised linked documents and metadata issues many months ago. *See* June 22, 2023 Letter from P. Korologos to R. McCallum. And four months remained in fact discovery when the States made their instant request and, by even Google’s count, more than half of the documents were produced in post-investigation productions.

Regarding Google’s statement in its January 30 letter that its “collection of linked documents—beyond those that can be identified in emails using an automated tool, which Plaintiffs already have—is a burdensome manual process,” that statement appears to conflict with representations Google has made in meet and confers, as recently as today, where Google’s counsel has stated that certain internal Google linked documents—including those related to Google Workspace, G Suite, Word processing, and Google Sheets—are easy for Google to search for and produce the underlying linked documents or metadata to link the documents. The States want and are entitled to those internal Google linked documents or the metadata necessary to link corresponding documents. As the States previously informed Google, the lack of linked documents and/or the required metadata identifying the linked documents (akin to producing emails without identification or production of their attachments) has hindered the States’ review of documents and preparation for depositions, making it difficult and prejudicial to the States to schedule depositions without the ability to review all relevant documents.

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Given that the States made their instant request for linked documents nearly a month ago, the States request that Google provide a final response by **February 12, 2024**, on whether Google agrees to conduct the searches for, and then produce if found, the requested linked documents and/or the required metadata as to the remaining 5,575 documents in Appendix 2. The States also request that Google, by that date, provide them a timeline of when that search and production will occur. The States can be available to meet and confer next week, and intend to raise this issue with the Special Master at the February 22, 2024 hearing.

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Sincerely,

/s/ Zeke DeRose III _____.

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